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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,123	11/21/2001	Albert R. DiPiero		2798

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BRYAN CAVE LLP
TWO NORTH CENTRAL AVENUE, SUITE 2200
PHOENIX, AZ 85004

EXAMINER

FRENEL, VANEL

ART UNIT	PAPER NUMBER
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3627

MAIL DATE	DELIVERY MODE
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10/09/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/990,123

Applicant(s)

DIPIERO ET AL.

Examiner

Vanel Frenel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16, 29 and 31-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16, 29, 31-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/21/07 has been entered.

Notice to Applicant

2. This communication is in response to the RCE filed on 7/21/07. Claims 1-16, 29 and 39-40 have been amended. Claims 17-28, 30 have been canceled. Claims 1-16, 29, 31-40 are pending.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-16 and 29, 31-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kahn et al (2002/0184148) in view of Lencki et al (2002/0049617) and further in view of Raskin et al (2001/0037214).

(A) As per claim 1, Kahn discloses a method of determining a directed contribution amount to an accruable health spending account for a member of an employer-sponsored health plan, comprising:

presenting an employer-funded defined contribution having a value for a given time period (See Kahn, Page 7, Paragraph 0136);

presenting at least one insurance premium option, the at least one insurance premium option defining an option cost for the given time period (See Kahn, Page 9, Paragraph 0156);

querying for a premium option selection based on the at least one insurance premium option, the premium option selection including a selection allocation less than or equal to the option cost (See Kahn, Page 11, Paragraph 0169).

Kahn does not explicitly disclose that the method having receiving the premium option selection; and calculating the directed contribution amount by subtracting either the selection allocation or the option cost from the defined contribution value.

However, these features are known in the art, as evidenced by Lencki. In particular, Lencki suggests that the method having receiving the premium option selection (See Lencki, Page 16, Paragraphs 0197-0200); and calculating the directed contribution amount by subtracting either the selection allocation or the option cost from the defined contribution value (See Lencki, Page 4, Paragraphs 0081-0086).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Lencki within the system of Kahn with the motivation of providing healthcare benefits and other traditional benefits such as Dental,

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Short/Long term disability, Life and Retirement are in need of change in order to meet the new needs of the workforce (See Lencki, Page 1, Paragraph 0007).

As understood, Kahn and Lencki do not explicitly disclose compliant with Section 105 of Internal Revenue Code of 1986".

Kahn and Lencki do not explicitly disclose that the method having reciting a year-to-year accruable health spending account "compliant with Section 105 of Internal Revenue Code of 1986".

However, this feature is known in the art, as evidenced by Raskin. In particular, Raskin suggests that the method having reciting a year-to-year accruable health account "compliant with Section 105 of Internal Revenue Code of 1986" (See Raskin, Page 2, Paragraphs 0011; Page 3, Paragraph 0025).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Raskin within the collective teachings of Kahn and Lencki with the motivation of providing tax-favored treatment which is available under Sections 105 and 106 of the Internal Revenue Code, neither the establishment of a Sponsor's Reimbursement Account, nor payment of benefits thereunder, is taxable to the employee (See Raskin, Page 2, Paragraph 0011).

Furthermore, it is old and well known that a year-to-year accruable health account "compliant with Section 105 of Internal Revenue Code of 1986" in the healthcare art (See Raskin, Page 2, Paragraphs 0011; Page 3, Paragraph 0025). Also Raskin points out "Other healthcare plan configurations are possible, as known to those skilled in the art, including plans that include a Medicare or other government

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component See Page 3, Paragraph 0022 of Raskin. The motivation for such a combination is found in Raskin at Page 2, Paragraph 0008) which discusses "Reimbursement Account, other means such as trust or other entity, tax-exempt or otherwise, an insurance policy, or any combination thereof, at the discretion of the Sponsoring Employer.

(B) As per claim 2, Lencki discloses the method, wherein the given time period comprises at least one of a group consisting essentially of a day, week, month, and year (See Lencki, Page 8, Paragraphs 0131-0132).

The motivation for combining the respective teachings of Kahn and Lencki are as discussed in the rejection of claim 1, and incorporated herein.

(C) As per claim 3, Kahn discloses the method wherein the defined contribution value, selection allocation, option cost, and the directed contribution amount are expressed in one or more units of currency (See Kahn, Page 15, Paragraphs 0223-0224).

(D) As per claim 4, Kahn discloses the method further comprising presenting the directed contribution amount (See Kahn, Page 15, Paragraphs 0224-0225).

(E) As per claim 5, Kahn discloses the method further comprising presenting a predicted contribution amount for the year-to-year accruable health spending account,

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the predicted contribution amount based on either the defined contribution value or the option cost (See Kahn, Page 3, Paragraph 0026).

(F) As per claim 6, Kahn discloses the method wherein said directed contribution amount calculating step comprises subtracting the selection allocation from the defined contribution value (See Kahn, Page 3, Paragraph 0026).

(G) As per claim 7, Kahn discloses the method further comprising:
calculating a predicted contribution amount for the year-to-year accruable health spending account by subtracting the option cost from the defined contribution value (See Kahn, Page 3, Paragraphs 0032-0034); and presenting the predicted contribution amount (See Kahn, Page 10, Paragraphs 0164-0166).

(H) As per claim 8, Kahn discloses the method further comprising:
calculating an out-of-pocket premium cost for the premium option selection by subtracting the selection allocation from the option cost (See Kahn, Page 4,).

(I) As per claim 9, Kahn discloses the method further comprising presenting the out-of-pocket premium cost (See Kahn, Page 10, Paragraphs 0158-0159).

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- (J) As per claim 10, Lencki discloses a method of paying an insurance premium of an insurance policy covering a member of an employer-sponsored health plan, the insurance policy defining a payor having a premium account, the method comprising:
- A) calculating the out-of-pocket cost in accordance with the method of Claim 8,
 - B) transferring a first amount member funds to the premium account, the first amount substantially equivalent to the calculated out-of-pocket premium cost (See Lencki, Page 4, Paragraphs 0081-0082); and
 - C) transferring a second amount from employer funds to the premium account, the second amount substantially equivalent to the selection allocation (See Lencki Page 13, Paragraphs 0174-0177).

The motivation for combining the respective teachings of Kahn and Lencki are as discussed in the rejection of claim 1, and incorporated herein.

- (K) As per claim 11, Lencki discloses the method wherein said transferring steps B and C comprise a single financial transaction (See Lencki, Page 13, Paragraph 0180).

The motivation for combining the respective teachings of Kahn and Lencki are as discussed in the rejection of claim 1, and incorporated herein.

- (L) As per claim 12, Lencki discloses the method wherein said transferring steps B and C comprise distinct financial transactions (See Lencki, Page 4, Paragraphs 0082-0089).

The motivation for combining the respective teachings of Kahn and Lencki are as discussed in the rejection of claim 1, and incorporated herein.

(M) As per claim 13, Kahn discloses the method wherein: the member funds are pre-tax; the accruable health spending account complies with section 105 of the Internal Revenue Code of 1986 (The Examiner interprets Keeping track of the legal payment and reporting requirements across federal, state and local authorities to be a form of Section 105 of the Internal Revenue Code of 1986 (See Kahn, Page 1, Paragraph 0004); and

said transferring step A complies with section 125 of the Internal Revenue Code of 1986 (The Examiner interprets Keeping track of the legal payment and reporting requirements across federal, state and local authorities to be a form of section 125 of the Internal Revenue Code of 1986 (See Kahn, Page 1, Paragraph 0004).

(N) As per claim 14, Raskin discloses a method of funding a year-to-year accruable health spending account for a member of an employer-sponsored health plan, comprising:

determining the directed contribution amount in accordance with the method of Claim 1 (See Raskin, Page 2, Paragraphs 0011; Page 3, Paragraph 0025);
and

transferring a first amount from an employer funded account to the year-to-year accruable health spending account for the member, the first amount substantially

equivalent to the directed contribution amount determined in said determining step (See Raskin, Page 2, Paragraphs 0011; Page 3, Paragraph 0025).

(N) As per claim 15, Kahn discloses the method further comprising:
withdrawing a sum from the year-to-tear accruable health spending account to reimburse the member for a medical expense (See Kahn, Page 11, Paragraph 0178).

(O) As per claim 16, Kahn discloses the method further comprising:
withdrawing a first sum from a flexible spending account to reimburse the member for a medical expense (See Khan, Page 12, Paragraphs 0178-0179); and
withdrawing a second sum from the year-to-year accruable health spending account to reimburse the member for the medical expense when the first sum is less than the medical expense (See Kahn, Page 11, Paragraph 0169).

(Q) As per claim 29, Kahn discloses a method of managing health care spending by an employee comprising the steps of:
establishing an accruable health spending account for the benefit of the employee (See Kahn, Page 7, Paragraph 0136);
reimbursing the employee for qualified medical expenses incurred during a first accounting period by debiting the accruable health spending account (See Kahn, Page 22, Paragraphs 0333-0334).

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Kahn does not explicitly disclose that the method having carrying forward any unused balance in the accruable health spending account for reimbursing the employee for qualified medical expenses incurred during a subsequent accounting period.

However, these features are known in the art, as evidenced by Lencki. In particular, Lencki suggests that the method having carrying forward any unused balance in the accruable health spending account for reimbursing the employee for qualified medical expenses incurred during a subsequent accounting period (See Lencki, Page 4, Paragraphs 0081-0083).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Lencki within the system of Kahn with the motivation of providing healthcare benefits and other traditional benefits such as Dental, Short/Long term disability, Life and Retirement are in need of change in order to meet the new needs of the workforce (See Lencki, Page 1, Paragraph 0007).

As understood, Kahn and Lencki do not explicitly disclose compliant with Section 105 of Internal Revenue Code of 1986".

Kahn and Lencki do not explicitly disclose that the method having reciting a year-to-year accruable health spending account "compliant with Section 105 of Internal Revenue Code of 1986".

However, this feature is known in the art, as evidenced by Raskin. In particular, Raskin suggests that the method having reciting a year-to-year accruable health account "compliant with Section 105 of Internal Revenue Code of 1986" (See Raskin, Page 2, Paragraphs 0011; Page 3, Paragraph 0025).

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It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Raskin within the collective teachings of Kahn and Lencki with the motivation of providing tax-favored treatment which is available under Sections 105 and 106 of the Internal Revenue Code, neither the establishment of a Sponsor's Reimbursement Account, nor payment of benefits thereunder, is taxable to the employee (See Raskin, Page 2, Paragraph 0011).

Furthermore, it is old and well known that a year-to-year accruable health account "compliant with Section 105 of Internal Revenue Code of 1986" in the healthcare art (See Raskin, Page 2, Paragraphs 0011; Page 3, Paragraph 0025). Also Raskin points out "Other healthcare plan configurations are possible, as known to those skilled in the art, including plans that include a Medicare or other government component See Page 3, Paragraph 0022 of Raskin. The motivation for such a combination is found in Raskin at Page 2, Paragraph 0008) which discusses "Reimbursement Account, other means such as trust or other entity, tax-exempt or otherwise, an insurance policy, or any combination thereof, at the discretion of the Sponsoring Employer.

(S) As per claim 31, Lencki discloses a method according to claim 29 and further comprising:

determining a defined contribution made by the employee's employer for the employee's health care expenses (See Lencki, Page 4, Paragraphs 0081-0086);

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selecting a healthcare insurance option available to the employee, and the premium charge associated with the selected insurance option (See Lencki, Page 3, Paragraphs 0078-0079);

allocating a portion of the defined contribution toward payment of the premium charge associated with the selected insurance option (See Lencki, Page 15, Paragraphs 0188-0190); and

crediting to the accruable health spending account a directed contribution amount equal to the defined contribution less the portion allocated for payment of the premium charge (See Lencki, Page 16, Paragraphs 0198-0200).

The motivation for combining the respective teachings of Kahn and Lencki are as discussed in the rejection of claims 1 and 29, and incorporated herein.

(T) As per claim 32, Lencki discloses a method according to claim 31 wherein the selecting a healthcare insurance option comprises selection by the employee utilizing a computer arranged to display the healthcare insurance options available to the employee together with the premium charge associated with each insurance option (See Lencki, Page 4, Paragraphs 0081-0084).

The motivation for combining the respective teachings of Kahn and Lencki are as discussed in the rejection of claims 1 and 29, and incorporated herein.

(U) As per claim 33, Lencki discloses a method according to claim 31 wherein the allocating a portion of the defined contribution comprises allocation by the employee

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utilizing a computer arranged to display the healthcare insurance options available to the employee, together with the premium charge associated with each insurance option, and an indication of the defined contribution (See Lencki, Page 4, Paragraphs 0081-0084).

The motivation for combining the respective teachings of Kahn and Lencki are as discussed in the rejection of claims 1 and 29, and incorporated herein.

(V) As per claim 34, Lencki discloses a method according to claim 31 and further comprising paying a portion of the premium charge associated with the selected insurance option through a payroll deduction plan (See Lencki, Page 7, Paragraphs 0127-0128).

The motivation for combining the respective teachings of Kahn and Lencki are as discussed in the rejection of claims 1 and 29, and incorporated herein.

(W) As per claim 35, Kahn discloses a method according to claim 34 wherein the payroll deduction plan is an IRS section 125 plan (The Examiner interprets Keeping track of the legal payment and reporting requirements across federal, state and local authorities to be a form of IRS section 125 plan (See Kahn, Page 1, Paragraph 0004).

(X) As per claim 36, Lencki discloses a method according to claim 31 including imposing a limitation on said allocating a portion of the defined contribution, based on

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the premium charge associated with the selected insurance option (See Lencki, Page 7, Paragraphs 0127-0128).

The motivation for combining the respective teachings of Kahn and Lencki are as discussed in the rejection of claims 1 and 29, and incorporated herein.

(Y) As per claim 37, Kahn discloses a method according to claim 29 wherein said debiting the accruable health spending account comprises the use of a debit card or credit card associated with the accruable health spending account (See Kahn, Page 28, Paragraph 0437).

(Z) As per claim 38, Kahn discloses a method according to claim 29 wherein the accruable health spending account is not individually funded but instead is associated with a pooled fund maintained by the employer (See Kahn, Page 28, Paragraph 0437).

(AA) As per claim 39, Kahn discloses a method of allocating a defined contribution amount paid by an employer to the healthcare of a member of an employer-sponsored health plan comprising the steps of:

presenting to the member the employer's defined contribution amount to the health care cost of the member for a given time period (See Kahn, Page 7, Paragraph 0136);

offering one or more insurance options to the member with each insurance option having an associated option cost (See Lencki, Page 15, Paragraph 0189);

receiving one or more insurance option selections for the member (See Kahn, Page 9, Paragraph 0156);

using input regarding the member to determine a dollar amount the employer will contribute from the defined contribution amount to a cost for each insurance option selection received for the member (See Kahn, Page 18, Paragraphs 0275-0276);

Kahn does not explicitly disclose that the method having calculating a contribution amount to be paid by the employer to an accruable health spending account compliant with section 105 of the Internal Revenue Code of 1986 by subtracting from the defined contribution amount the dollar amount of the contribution of the employer to each insurance option selection received for the member; and

transferring the calculated contribution amount to the accruable health spending account compliant with section 105 of the Internal Revenue Code of 1986 for the member, wherein:

a total amount paid by the employer and transferred to the accruable health spending account towards the one or more insurance option selections for the member is equal to or less than the defined contribution amount.

However, these features are known in the art, as evidenced by Raskin. In particular, Raskin suggests that the method having calculating a contribution amount to be paid by the employer to an accruable health spending account compliant with section 105 of the Internal Revenue Code of 1986 by subtracting from the defined contribution amount the dollar amount of the contribution of the employer to each insurance option selection received for the member (See Raskin, Page 2, Paragraph 0011); and

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transferring the calculated contribution amount to the accruable health spending account compliant with section 105 of the Internal Revenue Code of 1986 for the member, wherein:

a total amount paid by the employer and transferred to the accruable health spending account towards the one or more insurance option selections for the member is equal to or less than the defined contribution amount (See Raskin, Page 5, Paragraph 0043).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Raskin within the collective teachings of Kahn and Lencki with the motivation of providing tax-favored treatment which is available under Sections 105 and 106 of the Internal Revenue Code, neither the establishment of a Sponsor's Reimbursement Account, nor payment of benefits thereunder, is taxable to the employee (See Raskin, Page 2, Paragraph 0011).

As understood, Kahn and Lencki do not explicitly disclose compliant with Section 105 of Internal Revenue Code of 1986".

Kahn and Lencki do not explicitly disclose that the method having reciting a year-to-year accruable health spending account "compliant with Section 105 of Internal Revenue Code of 1986".

However, this feature is known in the art, as evidenced by Raskin. In particular, Raskin suggests that the method having reciting a year-to-year accruable health account "compliant with Section 105 of Internal Revenue Code of 1986" (See Raskin, Page 2, Paragraphs 0011; Page 3, Paragraph 0025).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Raskin within the collective teachings of Kahn and Lencki with the motivation of providing tax-favored treatment which is available under Sections 105 and 106 of the Internal Revenue Code, neither the establishment of a Sponsor's Reimbursement Account, nor payment of benefits thereunder, is taxable to the employee (See Raskin, Page 2, Paragraph 0011).

Furthermore, it is old and well known that a year-to-year accruable health account "compliant with Section 105 of Internal Revenue Code of 1986" in the healthcare art (See Raskin, Page 2, Paragraphs 0011; Page 3, Paragraph 0025). Also Raskin points out "Other healthcare plan configurations are possible, as known to those skilled in the art, including plans that include a Medicare or other government component See Page 3, Paragraph 0022 of Raskin. The motivation for such a combination is found in Raskin at Page 2, Paragraph 0008) which discusses "Reimbursement Account, other means such as trust or other entity, tax-exempt or otherwise, an insurance policy, or any combination thereof, at the discretion of the Sponsoring Employer.

(BB) As per claim 40, Kahn discloses a method of paying out-of-pocket health care expenses for a member of an employer-sponsored health plan (See Kahn, Page 7, Paragraph 0136) comprising the steps of:

establishing an accruable health spending account, compliant with section 105 of the Internal Revenue Code of 1986, for the benefit of the member;

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establishing a flexible spending account for the benefit of the member (See Lencki, Page 15, Paragraph 0193);

determining a directed contribution amount to be paid by the employer to the accruable health spending account for the benefit of the member (See Lencki, Page 15, Paragraph 0186);

transferring a first amount from an employer-funded account to the accruable health spending account for the member, the first amount substantially equivalent to the directed contribution amount (See Lencki, Page 22, Paragraph 0257);

Kahn and Lencki do not explicitly disclose that the method having withdrawing a first sum from the flexible spending account to reimburse the member for a medical expense;

withdrawing a second sum from the accruable health spending account to reimburse the member for a remainder of the medical expense when the first sum is less than the medical expense; and

carrying forward any unused balance in the accruable health spending account for reimbursing the member for qualified medical expenses incurred during a subsequent accounting period.

However, these features are known in the art, as evidenced by Raskin. In particular, Raskin suggests that the method having withdrawing a first sum from the flexible spending account to reimburse the member for a medical expense (See Raskin, Page 5, Paragraph 0046);

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withdrawing a second sum from the accruable health spending account to reimburse the member for a remainder of the medical expense when the first sum is less than the medical expense (See Raskin, Page 5, Paragraph 0043); and

carrying forward any unused balance in the accruable health spending account for reimbursing the member for qualified medical expenses incurred during a subsequent accounting period (See Raskin, Page 3, Paragraphs 0031-0032).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Raskin within the collective teachings of Kahn and Lencki with the motivation of providing tax-favored treatment which is available under Sections 105 and 106 of the Internal Revenue Code, neither the establishment of a Sponsor's Reimbursement Account, nor payment of benefits thereunder, is taxable to the employee (See Raskin, Page 2, Paragraph 0011).

As understood, Kahn and Lencki do not explicitly disclose compliant with Section 105 of Internal Revenue Code of 1986".

Kahn and Lencki do not explicitly disclose that the method having reciting a year-to-year accruable health spending account "compliant with Section 105 of Internal Revenue Code of 1986".

However, this feature is known in the art, as evidenced by Raskin. In particular, Raskin suggests that the method having reciting a year-to-year accruable health account "compliant with Section 105 of Internal Revenue Code of 1986" (See Raskin, Page 2, Paragraphs 0011; Page 3, Paragraph 0025).

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It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Raskin within the collective teachings of Kahn and Lencki with the motivation of providing tax-favored treatment which is available under Sections 105 and 106 of the Internal Revenue Code, neither the establishment of a Sponsor's Reimbursement Account, nor payment of benefits thereunder, is taxable to the employee (See Raskin, Page 2, Paragraph 0011).

Furthermore, it is old and well known that a year-to-year accruable health account "compliant with Section 105 of Internal Revenue Code of 1986" in the healthcare art (See Raskin, Page 2, Paragraphs 0011; Page 3, Paragraph 0025). Also Raskin points out "Other healthcare plan configurations are possible, as known to those skilled in the art, including plans that include a Medicare or other government component See Page 3, Paragraph 0022 of Raskin. The motivation for such a combination is found in Raskin at Page 2, Paragraph 0008) which discusses "Reimbursement Account, other means such as trust or other entity, tax-exempt or otherwise, an insurance policy, or any combination thereof, at the discretion of the Sponsoring Employer.

Response to Arguments

5. Applicant's arguments filed on 7/21/07 with respect to claims 1-16, 29, 31-40 are fully considered but they are not persuasive. Applicant's arguments will be addressed in the order in which they appear in the response filed on 7/21/07.

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(A) At pages 11-21 of the 7/21/07 response, Applicant argues that the features in the 7/11/07 amendment are not taught by or suggested by the applied references.

In response, all of the limitations which Applicant disputes as missing in the applied references, including the features newly added in the 7/21/07 amendment, have been fully addressed by the Examiner as either being fully disclosed or obvious in view of the collective teachings Kahn, Lencki and/or Raskin based on the logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention, as detailed in the remarks and explanations given in the preceding sections of the Office Action, and incorporated herein. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981), *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In addition, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference, nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not the applied art teaches automated system and

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method for providing real-time verification of health insurance eligibility (5,832,447) and method and system for processing transactions involving accounts for reimbursing medical expenses or patient responsible balances with multiple transaction substantiation modes (7,197,468).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vanel Frenel whose telephone number is 571-272-6769. The examiner can normally be reached on 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zeender Ryan Florian can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Vanel Frenel

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